

AMENDED IN SENATE JUNE 9, 2009

AMENDED IN SENATE MAY 6, 2009

AMENDED IN SENATE APRIL 16, 2009

SENATE BILL

No. 592

Introduced by Senator Romero

February 27, 2009

An act to amend Sections 17078.57 and 17078.62 of, and to add Section 17078.63 to, the Education Code, relating to school facilities, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 592, as amended, Romero. Charter Schools Facilities Program.

Existing law establishes the Charter Schools Facilities Program to provide funding to qualifying entities for the purpose of establishing school facilities for charter school pupils. Existing law requires the California School Finance Authority, in consultation with the State Allocation Board, to adopt regulations establishing uniform terms and conditions that would apply equally to funding for charter school facilities projects, including security provisions that include the requirement that title to project facilities be held by the school district in which the facility is to be physically located, in trust, for the benefit of the state public school system.

This bill instead would require that the security provisions include whether title to project facilities will be held by the school district in which the facility is to be physically located or by another entity, as specified. The bill would require applicants, prior to the release of funds for site acquisition or new construction final apportionments, to provide documentary evidence that the school district in which the facility is to

be physically located, a local governmental entity, or the charter school holds title to the project facilities, subject to specified conditions. The bill would ~~require authorize a charter school to request a school district that to transfer title to project facilities to an entity authorized by the bill, as specified, if the district entered into an agreement to hold title to charter school project facilities, prior to January 1, 2010, upon the request of a charter school that has applied for funding, to transfer title to the entity requested by the charter school, except as specified to hold title to the project facilities. The bill would authorize a school district that receives such a request to transfer the title to the entity designated in the request pursuant to terms and conditions mutually agreed upon by the district and the charter school.~~ The bill also would make conforming changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17078.57 of the Education Code is
- 2 amended to read:
- 3 17078.57. (a) The authority, in consultation with the board,
- 4 shall adopt regulations establishing uniform terms and conditions
- 5 that shall apply equally to all projects for funding in accordance
- 6 with Section 17078.58, including, but not limited to, all of the
- 7 following:
- 8 (1) The process for determining the manner in which the
- 9 applicant will pay its local matching share, including the method
- 10 for determining lease payments to be made in lieu of the local
- 11 matching share. The regulations shall comply with all of the
- 12 following criteria:
- 13 (A) The payment process set forth in Section 17199.4 may be
- 14 used.
- 15 (B) The payment process shall permit lump-sum local matching
- 16 payments and shall permit establishment of a schedule for lease
- 17 payments to be made in lieu of the local matching share.
- 18 (C) The lease payment schedule shall be calculated by
- 19 amortizing one-half of the total approved project costs, minus

1 lump-sum payments, over the entire payment period as set forth
2 in Section 17078.58.

3 (D) The payment schedule for payments in lieu of the local
4 matching funds pursuant to this section shall be based upon
5 payment, within a reasonable period of time not to exceed a 30-year
6 period, of one-half of the total eligible project costs, and shall be
7 calculated in a manner that is designed to result in full payment
8 of that portion, together with interest thereon at a rate set by the
9 authority. The interest rate shall be set using the lower of the
10 following:

11 (i) The rate paid on moneys in the Pooled Money Investment
12 Account as of the date of disbursement of the funding.

13 (ii) A rate equal to 50 percent of the interest rate paid by the
14 state on the most recent sale of state general obligation bonds, and
15 the interest rate shall be computed according to the true interest
16 cost method.

17 (E) Notwithstanding subparagraph (D), the authority shall not
18 set the interest rate on a loan at a rate lower than 2 percent. Program
19 participants that have locked in an interest rate before January 1,
20 2009, may reset their payment schedule based on the interest rate
21 set pursuant to subparagraph (D) as of January 1, 2009. Program
22 participants executing an agreement on and after January 1, 2009,
23 shall have their interest rate set at the time the funding agreement
24 is executed and shall not renegotiate interest rates without prior
25 approval of the authority.

26 (2) The method for determining whether a charter school is
27 financially sound. In the case of a charter school chartered by a
28 school district that is located outside of the school district that
29 chartered it, the method developed by the authority shall include,
30 but shall not be limited to, a site visit to the school facility currently
31 being used by the charter school during hours when pupils are
32 present and instruction is being provided.

33 (3) (A) Security provisions, including, but not limited to,
34 whether title to project facilities shall be held by the school district
35 in which the facility is to be physically located, in trust, for the
36 benefit of the state public school system, or by another entity as
37 authorized pursuant to Section 17078.63.

38 (B) The authority shall adopt a mechanism whereby a person
39 or entity who provides a substantial contribution that is applied to
40 the costs of the project in excess of the state share and the local

1 matching share may be granted a security interest to be satisfied
2 from the proceeds, if any, realized when the property is ultimately
3 disposed of as set forth in paragraph (5) of subdivision (b) of
4 Section 17078.62.

5 (4) The method for integrating funding pursuant to this article
6 with the general procedures of the authority pursuant to subdivision
7 (i) of Section 17180 for otherwise funding projects eligible for
8 funding under this chapter, if appropriate.

9 (b) The authority may adopt, amend, or repeal rules and
10 regulations pursuant to this chapter as emergency regulations. The
11 adoption, amendment, or repeal of these regulations is conclusively
12 presumed to be necessary for the immediate preservation of the
13 public peace, health, safety, or general welfare within the meaning
14 of Section 11346.1 of the Government Code.

15 SEC. 2. Section 17078.62 of the Education Code is amended
16 to read:

17 17078.62. (a) As a first priority, the existing charter school
18 shall be permitted to continue to use the facility until it is no longer
19 needed by the charter school for charter school purposes.

20 (b) If the charter school occupying a facility funded pursuant
21 to this article ceases to utilize the facility for a charter school
22 purpose, all of the following apply:

23 (1) If the charter school is no longer using the facility because
24 the school district in which the charter school is located has
25 revoked or declined to renew the charter, the school district, as a
26 necessary component of the first priority established in subdivision
27 (a), may not immediately occupy the facility, but shall allow a
28 reasonable time, not to exceed six months, for completion of the
29 review process contemplated in Section 47607 or 47607.5.

30 (2) As a second priority, any qualifying successor charter school
31 shall be permitted to meet its facility needs by occupying the
32 facility on equal terms as the prior charter school occupant.

33 (3) As a third priority, the school district in which the charter
34 school is physically located may notify the authority and take
35 possession of the facility and make the facility available for
36 continued use as a public school facility.

37 (4) If the school district in which the charter school is physically
38 located elects to take possession of a facility pursuant to paragraph
39 (3), it shall pay the balance of the unpaid local matching share or
40 demonstrate that it is willing and able to continue to make the lease

1 payments in lieu of the local matching share on the same terms.
2 However, the payments shall be reduced or eliminated, as
3 appropriate, if the school district complies with all of the following:

4 (A) It demonstrates that it would have been eligible for hardship
5 funding under Article 8 (commencing with Section 17075.10) at
6 the time that the application for funding the facility under this
7 article was originally submitted.

8 (B) It certifies to the board that it will utilize the facilities for
9 public school purposes for a period of at least five years from the
10 date that it occupies the facility.

11 (5) If the school district declines to take possession pursuant to
12 paragraph (3), or if the facility is subsequently no longer needed
13 for public school purposes, the titleholder shall dispose of the
14 facilities in a manner otherwise applicable to the disposal of surplus
15 public schoolsites. Any unpaid local matching share shall be paid
16 from the net proceeds, if any, of the disposition and shall be
17 deposited into the respective 2002, 2004, or 2006 Charter School
18 Facilities Account. To the extent that funds remain from the
19 proceeds of the disposition after repayment of the local matching
20 share, any security interest granted to a person or entity pursuant
21 to subparagraph (B) of paragraph (3) of subdivision (a) of Section
22 17078.57 shall be satisfied. Funds remaining from the proceeds
23 after any security interest has been satisfied shall be paid to the
24 school district in which the facility is located to be used for capital
25 improvements in the school district.

26 (6) If the lease payments in lieu of the local matching share are
27 fully paid, the school district shall continue to hold title to the
28 facility, in trust, for the benefit of the state public school system.
29 The school district shall permit continued use of the facility for
30 charter school purposes as long as the facility is needed for those
31 purposes.

32 SEC. 3. Section 17078.63 is added to the Education Code, to
33 read:

34 17078.63. (a) Prior to the release of funds for an application
35 submitted pursuant to paragraph (2) of subdivision (b) of Section
36 17078.53 for site acquisition or new construction final
37 apportionments, applicants shall provide one of the following:

38 (1) Documentary evidence that the school district in which the
39 facility is to be physically located holds title to the project facilities
40 in trust for the benefit of the state public school system.

(2) Documentary evidence that a local governmental entity, including, but not limited to, a county board of education, a city, a county, or a city and county, holds title to the project facilities in trust for the benefit of the state public school system, subject to both of the following conditions:

(A) The local governmental entity shall not exercise any control over the operation of the charter school.

(B) The local governmental entity shall comply with the uniform terms and conditions set forth in Section 17078.57.

(3) A request that the charter school be authorized to hold fee simple title to the subject property, on which a lien shall be recorded in favor of the board for the total amount of funds allocated pursuant to this article. The charter school shall include with the request a statement outlining the reasons why ownership of the project facilities is not vested with an entity set forth in paragraph (1) or (2). Prior to releasing any project funds, the board shall make findings that the applicant has submitted all of the information required by this paragraph.

~~(b) Upon the request of a charter school that has applied for funding pursuant to paragraph (2) of subdivision (b) of Section 17078.53, a school district that entered into an agreement to hold title to charter school project facilities prior to January 1, 2010, shall transfer title to the entity requested by the charter school pursuant to this section. A school district is not subject to the requirement in this subdivision under either of the following circumstances:~~

~~(1) The school district has contributed a dollar amount that is no less than 50 percent of the local matching share based on the approved preliminary apportionment.~~

~~(2) The charter school facility project is located on a site purchased in whole by the school district and ownership is retained by the school district.~~

(b) A charter school may request a school district to transfer title to project facilities to an entity authorized by paragraph (2) or (3) of subdivision (a) if the school district entered into an agreement, prior to January 1, 2010, to hold title to those facilities. A school district that receives a request pursuant to this subdivision may transfer the title to the entity designated in the request pursuant to terms and conditions mutually agreed upon by the district and the charter school.

1 (c) The board may adopt regulations to implement this section.

2 *SEC. 4. This act is an urgency statute necessary for the*
3 *immediate preservation of the public peace, health, or safety within*
4 *the meaning of Article IV of the Constitution and shall go into*
5 *immediate effect. The facts constituting the necessity are:*

6 *In order to expedite the construction of charter school facilities*
7 *by facilitating the allocation of state general obligation bond*
8 *proceeds authorized by the voters to be used for purposes of the*
9 *Charter Schools Facilities Program at the earliest possible time,*
10 *it is necessary that this act take effect immediately.*